

Fashion Law: Apparel Licensing for Licensing Professionals

Presented to the
California State Bar Association
Intellectual Property Section/Licensing Division

Presented by
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Staci focuses her practice on fashion law, commercial and intellectual property litigation, and client counseling. Her transactional experience includes counseling clients on licensing, enforcement of copyright and trademark rights and general business practices as well as negotiating and drafting numerous business contracts, with particular emphasis on licensing agreements. Staci's clients include designers, manufacturers, retailers, importers, exporters, charitable organizations, entertainment entities, and property owners.

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Introduction

◆ A. What is Fashion Licensing:

- ◆ “Renting” a company’s intellectual property to another entity, for a sum of money, for a certain product or category of products, for an agreed upon period of time.

◆ B. Why license?

1. Creates a revenue stream where one did not previously exist.
2. Utilizes the know-how of “specialists” to turn a “label” into a “Brand.”



Create Strategic Plan

*may need to consult industry professionals

◆ A. Product type

1. Review the goods produced by the licensor to determine the next logical step.
2. Will the agreement cover a different product category or a different customer within same category?

◆ B. Territory

1. What is the most advantageous way to carve up the map?
 - a. Geographically
 - b. Price points
2. Exclusive vs. non-exclusive
3. Sub licensing permitted?



Create Strategic Plan

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- ◆ C. Finding the right partner.
 - 1. What to look for in a licensor/licensee
 - 2. Due diligence required.

- ◆ D. Money
 - 1. Revenue Stream
 - 2. Royalty Percentage
 - 3. Minimum Payments
 - 4. Advances



Draft Agreement

◆ A. Key provisions in Fashion Licensing

1. Maintaining integrity of trademark

a. Design Control

b. Quality Control

1. Ensure quality is same as promised

2. Proper fit

3. Where are the Garments made?

4. Options for non-conforming goods.

5. Production for off-price/close-out goods permitted?



Draft Agreement

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- **c.** Costing
 - 1. Who sets wholesale cost?
 - 2. Maintain image of the brand.
- 2. Marketing contribution
 - a. Fixed amount or minimum spends
 - b. Collateral approval and ownership
 - c. Tradeshow and sales rep requirements
- 3. Competition defined
 - a. Many licensees make and sell competing brands
 - b. Make sure to discuss pro's and cons with the client



DRAFT AGREEMENT

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4. Discounts required

- a. Set price or formula for key vendors
- b. Set price or formula for licensor's purchase for use in own stores, website or promotional activities.
- c. Common discount: 10% less than best line price

5. Royalty Statements

- a. Key components include defining discounts, allowances and promotional items as well as capping returns.
- b. Make sure a sample is included as an exhibit

◆ B. Bonus revenue – potential side agreements for principals

- 1. PR agreements
- 2. Design/Consulting agreements



FOLLOW UP

Royalty Auditing and Performance Issues

- ◆ Remember, 90% of all licensees are under paying by 10% or more
- ◆ Use royalty auditors who specialize in fashion
- ◆ Beware of unreported sales by “Affiliates”
- ◆ Have a procedure to monitor all agreements and to terminate non-performing licenses



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